

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **People of MI v Homer Midgyette**  
Docket No. **281142**  
L.C. No. **74-009462**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),  
orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal filed October 12, 2007, is DISMISSED for lack of jurisdiction because the defendant cannot appeal the denial or rejection of a successive motion for relief from judgment. See MCR 6.502(G)(1). Defendant was required to demonstrate that even with due diligence he could not have produced the alleged newly discovered evidence in the motion for relief from judgment that was the subject of his application in docket number 244179. Considering the alleged newly discovered evidence comes from his mother and sister there is no reason why defendant could not have raised the issue in the prior motion for relief from judgment. Furthermore, even if an issue involves newly discovered evidence that does not give the defendant the ability to raise issues that neither involve a retroactive change in the law, nor involve newly discovered evidence.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 18 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk